

What is the Board of Adjustment?

The North Carolina Enabling Act provides for a town council to set up a Board of Adjustment (BOA) consisting of at least five members to hear and decide appeals from decisions of the administrative officer charged with enforcing its Zoning Ordinance. In Southern Shores it is the Building Inspector who is also the Code Enforcement Officer.

Basically, what we do is to grant relief, i.e. a variance from provisions of the Zoning Ordinance but only under very special circumstances. The BOA is a quasi-judicial body, which means that we act like a court, and like a court, we hear evidence, take testimony under oath, accept exhibits and make our decisions based on the evidence presented at the hearing. An appeal from our decision can only be made to the superior court.

In seeking a variance, or relief from a ruling by the Code Enforcement Officer, the applicant must present "substantial, competent and material" evidence showing that "practical difficulties or unnecessary hardships would result from a strict application of the Ordinance." (emphasis added) The applicant must present evidence showing the following: (see Sec. 12.04 (B) (1) Town of Southern Shores Zoning Ordinance)

1. That special conditions exist which are peculiar to the land or structure involved and which are not applicable to other lands and structures.
2. That a literal interpretation of the ordinance will deprive the applicant of rights enjoyed by other properties.
3. That the special conditions and circumstances do not result from actions of the applicant.
4. That granting the variance will not provide the applicant any special privilege that is denied by this Ordinance to other lands or buildings.

"The Board of Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this Ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare."

As you can see, the applicant who seeks relief must climb a fairly high mountain to be granted a variance. Most of our cases involve an addition to or alteration of an existing building that either runs afoul of the 30% lot coverage limitation or the 15 foot side yard setback restriction. Therefore, unless there is something special about the lot or the building, relief will not be granted. Additionally, granting a variance requires a vote of four out of the five Board members.

In spite of these difficult hurdles, we do grant variances and welcome anyone seeking relief from a decision of The Code Enforcement Officer.

Bob Siegel, Chairman BOA